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Attorney At Law**

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**File# J:\PORTEOUS\CONFLICT ISSUE - WESTLING\06.24.2010 - Conflict - Trasmit
Let.ssd.wpd**

June 24, 2010

The Honorable Claire McCaskill, Chair
Senate Impeachment Trial Committee
United States Senate
Russell Senate Office Building, Room B-34A
Washington, D.C. 20002

The Honorable Orrin G. Hatch, Vice Chair
Senate Impeachment Trial Committee
United States Senate
Russell Senate Office Building, Room B-34A
Washington, D.C. 20002

Re: The Impeachment Trial of the Honorable G. Thomas Porteous, an Article III Judge.
Motion To Withdraw From the Representation Of Honorable G. Thomas Porteous, an
Article III Judge.

GREETINGS SENATOR McCASKILL AND SENATOR HATCH:

Please notice the Joint Motion To Withdraw by Attorney Samuel S. Dalton (LSBA# 4473) and Attorney Rémy Voisin Starns from the Representation of G. Thomas Porteous, an Article III Judge.

The Motion, with the exhibits, is self-explanatory in that it exhibits a conflict of interest that requires withdrawal by the undersigned attorneys.

Thank you for your attention and patience in this matter.

Sincerely,



Samuel S. Dalton (LSBA# 4473)
Attorney At Law



Rémy Voisin Starns (LSBA# 26522)
Attorney At Law

**In The Senate of the United States
Sitting as a Court of Impeachment**

_____)
In re: _____)
Impeachment of G. Thomas Porteous, Jr., _____)
United States District Judge for the _____)
Eastern District of Louisiana _____)
_____)

**JOINT MOTION TO WITHDRAW FROM REPRESENTING
THE HON. G. THOMAS PORTEOUS, AN ARTICLE III JUDGE**

**BY
ATTORNEY SAMUEL S. DALTON (LSBA# 4473)
AND
ATTORNEY RÉMY VOISIN STARNs (LSBA 26522)**

**NOW BEFORE THE SENATE OF THE UNITED STATES, SITTING AS A COURT
OF IMPEACHMENT, comes Samuel S. Dalton, attorney at law (LSBA# 4473) and Rémy
Voisin Starns, members, in good standing of the Louisiana State Bar Association, the 5th
Circuit Bar Association, and admitted to practice law and appear in the Supreme Court of the
United States of America, hereinafter referred to as Movers, appearing herein for the sole
purpose of informing the Senate of the United States, Sitting as a Court of Impeachment,
that:**

**1. It has become mandatory, as a matter of Ethics and Professionalism, that
withdrawal, by Movers, from any representation of the Honorable G. Thomas
Porteous, Jr., an Article III Judge of the United States District Court for the Eastern
District of Louisiana, in the above Entitled Matter for the following reasons:**

A) The Honorable G. Thomas Porteous has been Impeached by the United States House of Representatives and faces trial, in the United States Senate, upon Four Articles of Impeachment approved by the House of Representatives; and,¹

B) The Louisiana Rules of Professional Conduct for Attorneys, Rule 1.7 thereof provides, to-wit:

Louisiana Rules of Professional Conduct

RULE 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:**
- (1) the representation of one client will be directly adverse to another client; or**
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:**
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
 - (2) the representation is not prohibited by law;**
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
 - (4) each affected client gives informed consent, confirmed in writing.**

¹ See Exhibit A, Articles of Impeachment, attached hereto and made a part hereof.

AND,

C) The District of Columbia Rules of Professional Conduct for Attorneys, Rule 1.7 thereof provides, to-wit:

Rule 1.7—Conflict of Interest: General Rule

(a) A lawyer shall not advance two or more adverse positions in the same matter.

(b) Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:

(1) That matter involves a specific party or parties and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer;

(2) Such representation will be or is likely to be adversely affected by representation of another client;

(3) Representation of another client will be or is likely to be adversely affected by such representation;

(4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.

(c) A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if

(1) Each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and

(2) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.

(d) If a conflict not reasonably foreseeable at the outset of representation arises under paragraph (b)(1) after the representation commences, and is not waived under paragraph (c), a lawyer need not withdraw from any representation unless the conflict also arises under paragraphs (b)(2), (b)(3), or (b)(4).

Each of the foregoing Rules mandate the withdrawal of any representation of the said

G. Thomas Porteous, an Article III Judge, in the above entitled Impeachment Proceedings, by

Movers, because:

1) Rhona Danos is listed as an witness, in the prosecution of this matter, in the letter dated April 13, 2010, addressed to Honorable Claire McCaskill, Chairman, and Honorable Orrin Hatch, Vice Chairman, Senate Rule IX Impeachment Committee by House Managers, Adam Schiff and Bob Goodlatte²; and,

2) Movers are presently, at all relevant times herein, represented Rhona Danos in the matter entitled Rhonda Danos v. Edith Jones, Chief Judge, et al, No. 09-6299 on the Docket of the United States District Court for the Eastern District of Louisiana³; and,

3) Movers, at all times relevant, were under the belief that a waiver could cure the current and actual conflict of interest, however, after learning of the attitude and interpretation placed upon the Louisiana and the District of Columbia Rules of Professional Conduct (1.7) relative to conflict of interest, by Adam Schiff, Chairman, Impeachment Task Force and Bob Goodlatte, Ranking Member, Impeachment Task Force.⁴ Movers consulted with other Attorneys and realized that such conflict cannot be cured by a waiver from a fully informed client; it being impossible to fully inform Rhonda Danos of the consequences of this dual representation, without disclosing privileged information.

This court has consistently held that a defense attorney required to cross-examine a current or former client on behalf of a current defendant suffers from an actual conflict. See, e.g., State v. Carmouche, 508 So.2d at 804; Franklin, 400 So.2d at 620 ("[W]e must agree with the defendant's attorney, and with the trial judge, that an actual conflict arose when the state called

²See Exhibit B, April 13, 2010 letter by Adam Schiff and Bob Goodlatte, attached hereto and made a part hereof.

³See Exhibit C, Excerpts from Federal Complaint wherein Rhonda Danos appears as Plaintiff, represented by Movers, attached hereto and made a part hereof.

⁴See Exhibit D, letter of October 29, 2009, addressed to Attorney Richard Westling, attached hereto and made a part hereof.

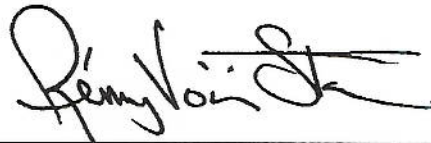
[counsel's former client] to the stand. [Counsel] was put in the unenviable position of trying zealously to represent the defendant at trial while simultaneously trying to protect the confidences of a former client who was testifying for the state against the defendant."); see also Dane S. Ciolino, ed., Louisiana Rules of Professional Conduct, Rule 1.7 comment 3 (L.S.B.A. 2001) ("As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent."). *State of Louisiana v. Cisco*, No. 2001-KA-2732 (La. S.Ct. December 3, 2003, Rehearing Denied January 16, 2004, 861 So.2d 118 (La. S.Ct. 12/03/2003) at pg. 130 (Italics and underlined added);

In view of the foregoing premises and the Rules of Professional Conduct for Attorneys, Movers are obligated to recognize the "actual and current conflict of interest" outstanding herein, thereby mandating the withdrawal and the removal of themselves from rendering any legal representation on behalf of the said G. Thomas Porteous in the above entitled Impeachment Proceedings; and,

IT IS SO MOVED.



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Rémy Voisin Starns
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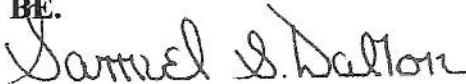
CERTIFICATE

I HEREBY CERTIFY THAT ON THE 24th DAY OF JUNE, 2010, I SERVED COPIES OF THE FOREGOING BY 1st Class Mail and/or ELECTRONIC MEANS ON THE HOUSE MANAGERS, THROUGH COUNSEL, AT THE FOLLOWING EMAIL AND/OR ADDRESSES, TO-WIT:

Alan Baron - abaron@sevfarth.com
Mark Dubester - mark.dbester@mail.house.gov
Harold Damelin - Harold.damelin@mail.house.gov
Morgan Frankel - Morgan J. Frankel
Attorney at Law
Office of Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510-7250
Kirsten Konar - kkonar@sevfarth.com

Jessica Klein - jessica.klein@mail.house.gov
Richard Westling - rwwestling@ober.com
P. J. Meitl - pjmeitl@bryancave.com
Jonathan Turley - jturley@law.gwu.edu
Rebecca Seidel - United States Senate
Impeachment Committee
Russell Senate Office Building
Room B-34A
Washington, DC 20002

I FURTHER CERTIFY THAT THE EXHIBITS, ATTACHED HERETO AND MADE A PART HEREOF, ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.



Samuel S. Dalton, (LSBA#4473)
Attorney

H. Res. 1031
In the House of Representatives, U.S.,
March 11, 2010.

Impeaching G. Thomas Porteous, 3r., judge of the United States District Court for the Eastern District of Louisiana, for high crimes and misdemeanors.

Resolved, That G. Thomas Porteous, Jr., a judge of the United States District Court for the Eastern District of Louisiana, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America against G. Thomas Porteous, Jr., a judge in the United States District Court for the Eastern District of Louisiana, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

Article I

G. Thomas Porteous, Jr., while a Federal judge of the United States District Court for the Eastern District of Louisiana, engaged in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge, as follows:

Judge Porteous, while presiding as a United States district judge in Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises, denied a motion to recuse himself from the case, despite the fact that he had a corrupt financial relationship with the law firm of Amato & Creely, P.C. which had entered the case to represent Liljeberg. In denying the motion to recuse, and in contravention of clear canons of judicial ethics, Judge Porteous failed to disclose that beginning in or about the late 1980s while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, he engaged in a corrupt scheme with attorneys, Jacob Amato, Jr., and Robert Creely, whereby Judge Porteous appointed Amato's law partner as a curator¹ in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm. During the period of this scheme, the fees received by Amato & Creely amounted to approximately \$40,000, and the amounts paid by Amato & Creely to Judge Porteous amounted to approximately \$20,000.

Judge Porteous also made intentionally misleading statements at the recusal hearing intended to minimize the extent of his personal relationship with the two attorneys. In so doing, and in failing to disclose to Lifemark and its counsel the true circumstances of his relationship with the Amato & Creely law firm, Judge Porteous deprived the Fifth Circuit Court of Appeals of critical information for its review of a petition for a writ of mandamus, which sought to overrule Judge Porteous's denial of the recusal motion. His conduct deprived the parties and the public of the right to the honest services of his office.

Judge Porteous also engaged in corrupt conduct after the Lifemark v. Liljeberg bench trial, and while he had the case under advisement, in that he solicited and accepted things of value from both Amato and his law partner Creely, including a payment of thousands of dollars in cash. Thereafter, and without disclosing his corrupt relationship with the attorneys of Amato & Creely PLC or his receipt from them of cash and other things of value, Judge Porteous ruled in favor of their client, Liljeberg.

By virtue of this corrupt relationship and his conduct as a Federal judge, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for, and confidence in, the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

Article II

G. Thomas Porteous, Jr., engaged in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States District Court Judge. That conduct included the following: Beginning in or about the late 1980s while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, and continuing while he was a Federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III, and his sister Lori Marcotte. As part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. These official actions by Judge Porteous included, while on the State bench, setting, reducing, and splitting bonds as requested by the Marcottes, and improperly setting aside or expunging felony convictions for two Marcotte employees (in one case after Judge Porteous had been confirmed by the Senate but before being sworn in as a Federal judge). In addition, both while on the State bench and on the Federal bench, Judge Porteous used the power and prestige of his office to assist the Marcottes in forming relationships with State judicial officers and individuals important to the Marcottes' business. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench.

Accordingly, Judge G. Thomas Porteous, Jr., has engaged in conduct so utterly lacking in honesty and integrity that he is guilty of high crimes and misdemeanors, is unfit to hold the office of Federal judge, and should be removed from office.

Article III

Beginning in or about March 2001 and continuing through about July 2004, while a Federal judge in the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr.,

engaged in a pattern of conduct inconsistent with the trust and confidence placed in him as a Federal judge by knowingly and intentionally making material false statements and representations under penalty of perjury related to his personal bankruptcy filing and by repeatedly violating a court order in his bankruptcy case. Judge Porteous did so by--

- (1) using a false name and a post office box address to conceal his identity as the debtor in the case;
- (2) concealing assets;
- (3) concealing preferential payments to certain creditors;
- (4) concealing gambling losses and other gambling debts; and
- (5) incurring new debts while the case was pending, in violation of the bankruptcy court's order.

In doing so, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for and confidence in the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

Article IV

In 1994, in connection with his nomination to be a judge of the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge. These false statements included the following:

- (1) On his Supplemental SF-86, Judge Porteous was asked if there was anything in his personal life that could be used by someone to coerce or blackmail him, or if there was anything in his life that could cause an embarrassment to Judge Porteous or the President if publicly known. Judge Porteous answered 'no' to this question and signed the form under the warning that a false statement was punishable by law.
- (2) During his background check, Judge Porteous falsely told the Federal Bureau of Investigation on two separate occasions that he was not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion.

(3) On the Senate Judiciary Committee's ' Questionnaire for Judicial Nominees', Judge Porteous was asked whether any unfavorable information existed that could affect his nomination. Judge Porteous answered that, to the best of his knowledge, he did ' not know of any unfavorable information that may affect [his] nomination'. Judge Porteous signed that questionnaire by swearing that 'the information provided in this statement is, to the best of my knowledge, true and accurate'.

However, in truth and in fact, as Judge Porteous then well knew, each of these answers was materially false because Judge Porteous had engaged in a corrupt relationship with the law firm Amato & Creely, whereby Judge Porteous appointed Creely as a curator' in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm and also had engaged in a corrupt relationship with Louis and Lori Marcotte, whereby Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench. Judge Porteous's failure to disclose these corrupt relationships deprived the United States Senate and the public of information that would have had a material impact on his confirmation.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

Congress of the United States
Washington, DC 20515

April 13, 2010

The Honorable Claire McCaskill
Chairman, Senate Rule XI Impeachment Committee United States Senate
Washington, D.C.

The Honorable Orrin Hatch
Vice Chairman, Senate Rule XI Impeachment Committee United States Senate
Washington, D.C.

Re: Impeachment of Judge G. Thomas Porteous, Jr. — Preliminary Matters

Dear Senator McCaskill and Senator Hatch:

The purpose of this letter is to address the questions set forth in the March 31, 2010 email from Senate Legal Counsel Frankel relating to certain preliminary procedural issues in connection with the impeachment trial of Judge Porteous.

Pretrial Motions. The House may raise pre-trial motions regarding the following matters:

- Motion to admit as substantive evidence specific prior sworn testimony at the Fifth Circuit Special Investigative Committee Hearing [the Fifth Circuit Hearing] and at the House Impeachment Task Force Hearings where Judge Porteous or his counsel has either cross-examined the witness or has been provided the opportunity to do so;
- Motion to admit as substantive evidence the sworn testimony and other statements of Judge Porteous at the Fifth Circuit Hearing;
- Motion to admit certain documents into evidence, the authenticity and relevance of which are not in dispute. These would include, for example, court records (the curatorships, the Liljeberg proceedings, and the bankruptcy proceedings) or other similar documents. It is possible that this motion will be unnecessary, or will be limited in scope, depending on whether a stipulation can be reached with Judge Porteous's counsel on this topic;
- Motion to permit or admit expert testimony; and
- Motion relating to stipulations, if appropriate.

Stipulations as to the authenticity of documents. The House believes that the authenticity of the documents that are relevant to the impeachment trial is beyond real dispute. These documents generally consist of court records, transcripts, financial records, public records and certain business records. The House has already identified those documents which are likely to be used in the Senate trial (using the same exhibit numbers from the Report that accompanied the Impeachment Resolution), and has provided counsel for Judge Porteous a disc containing the documents and an exhibit list. By separate letter dated April 9, 2010, the House has requested that Judge Porteous stipulate to the authenticity of the documents on the exhibit list.

Stipulations as to facts. The House believes that a significant portion of the facts that are alleged in the Articles are uncontested or have been established beyond legitimate dispute. As an example, Judge Porteous has admitted to pertinent facts surrounding his relationship with attorneys Jacob Amato and Robert Creely — including his financial relationship with them prior to becoming a Federal judge, his handling of the Liljeberg gr case, his solicitation and acceptance of cash from Amato when the case was pending, and his acceptance of other things of value from Amato and Creely while the case was pending. Similarly, the essential facts surrounding Judge Porteous's handling of his personal bankruptcy are not in dispute. The House is in the process of preparing a number of proposed factual stipulations, and will soon be providing them to Judge Porteous's counsel for review.

Nonetheless, to expedite the stipulation process, the House suggests that at the time the Committee sets a motions schedule in this case, it direct each party to consider stipulations proposed by the other party. The House further suggests that "any proposed stipulation of fact [or as to authenticity] . . . be accepted as true unless the opposing party file[s] an objection which include[s] a proffer as to why the proposed stipulation of fact [or authenticity] should not be accepted as true." The House urges that the Committee direct that this process be completed as of the date that responses to motions are due to be filed.

Evidence from prior proceedings. It is the position of the House that all the testimonial or documentary evidence that was admitted into evidence in the Fifth Circuit proceeding is admissible in the Senate trial. (As noted, the House may file a motion seeking to admit particular evidence in advance of the Senate trial.) At this point in time the House does not anticipate seeking to admit testimony or witness statements that have not been subject to cross-examination. The House cannot rule out the possibility that circumstances may arise where it would seek to have the Committee consider sworn prior recorded testimony or other statements of witnesses whose credibility had not been questioned or whose statements relate to facts not in

1. "Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101' Cong., 1st Sess. 169 (1989).

substantial dispute.²

Witnesses. The House may call the following witnesses. The nature of the testimony of the respective witnesses is generally described in the Report that accompanied the Articles of Impeachment. Depending on the nature of the cross-examination or the defense case generally, it is likely that it will not be necessary to call all of them, and, of course, it may be necessary to call other witnesses to address factual contentions that may be raised by the defendant. Those who sought immunity in connection with the House investigation are indicated.

Article I

1. Robert Creely [Immunity]
2. Jacob Amato [Immunity]
3. Leonard Levenson [Immunity]
4. Donald Gardner
5. Joseph Mole
6. Rhonda Danos [Immunity]

Article 2

7. Louis Marcotte
8. Lori Marcotte
9. Ronald Bodenheimer
10. Bruce Netterville [Immunity]
11. Mike Reynolds
12. Jeffrey Duhon
13. Aubrey Wallace

Article 3

14. Claude Lightfoot
15. FBI Special Agent DeWayne Horner
16. FBI Financial Analyst Gerald Fink
17. Richard Greendyke

Article 4

18. Former FBI Agent Cheyanne Tackett
19. Former FBI Agent Robert Hamill

²See, e.g., "Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101st Cong., 1st Sess. 170 (1989).

Length of the case-in-chief. The House believes it can put on its case-in-chief in 30 hours of direct testimony.

Other. On March 23, 2010, the House provided to Judge Porteous all the exhibits cited in the House Report, as well as other materials marked as exhibits and an accompanying Exhibit List. (In that the Report refers to matters such as procedural and litigation background that are not going to be part of the trial in this case, the Exhibit List contains numerous documents which will not constitute evidence at trial.) The House also made available other documents and records for inspection. Judge Porteous's attorneys have already made an initial review of these other documents. (A copy of the letter and Exhibit List is attached.)

A review of the Exhibit List provided to Mr. Westling reveals that there are virtually no materials with which Judge Porteous is unfamiliar. A significant portion of the documents on the Exhibit List were provided to Judge Porteous in connection with the Fifth Circuit Hearing or consist of testimony taken at that Hearing.³ Other significant sets of records include: 1) various documents describing the procedural background in this case; 2) court documents with which Judge Porteous is personally familiar, such as the records from the Liljeberg case, over which Judge Porteous presided; and 3) documents consisting of the grand jury-related litigation in this case.⁴

Though the Committee on the Judiciary's Impeachment Task Force developed additional corroboration for certain of the allegations — such as by obtaining the curatorship orders issued by Judge Porteous to Robert Creely, obtaining records of bails set by Judge Porteous that benefitted the Marcottes, obtaining the orders by which Judge Porteous set aside convictions, or engaging in further analysis of Judge Porteous's financial records related to his bankruptcy — a review of the Articles demonstrates they set forth virtually no substantive allegation of which Judge Porteous and his attorney were not personally aware:

³These include a substantial portion of Exhibits 11-49, relating to Amato, Creely, Gardner, Levenson and Danos; Exhibits 100-114, consisting of Judge Porteous's financial disclosure reports; Exhibits 120-124, consisting of the Lightfoot grand jury testimony; exhibits 124-149, consisting of various bankruptcy records; and Exhibits 301-343, consisting of casino records and a few other miscellaneous bankruptcy-related records.

⁴Exhibits 1-10 are background documents related to the procedural history of this case; Exhibits 50-68 are Liljeberg court records; Exhibits 400-436 are the litigation documents related to Judge Porteous's efforts to keep relevant materials from the House and Senate. In addition, Exhibits 150 through 200 generally consist of records related to Judge Porteous's seeking and acceptance of trips and gifts from various parties that are not charged in the Articles but are contained in the Report. Exhibits 200 through 300 are Depositions exhibits. Some of these are photographs (and some of the photographs include Judge Porteous), but many are duplicates of documents that were marked and listed in other places on the Exhibits List and include numerous exhibits related to matters not charged in the Articles.

Article I. Judge Porteous has been aware of the details and substance of the Liljeberg allegations since in or about late 2003. Judge Porteous was provided with the documents, including grand jury testimony, related to his relationships with the Robert Creely and Jacob Amato and his handling of the Liljeberg case in connection with the October 2007 Fifth Circuit Hearing. At that Hearing, he cross-examined Creely, Amato, and Joseph Mole — the critical fact witnesses. Judge Porteous was also present at the Task Force Hearing at which those three men testified and were cross-examined by his counsel.

Article II. Judge Porteous has been familiar with the Marcotte allegations since at least 2003. Indeed, in early 2004, Judge Porteous's criminal defense attorney at the time engaged in affirmative defensive efforts on Judge Porteous's behalf to keep him from being charged in the Marcotte corruption scheme. These efforts included obtaining from Louis Marcotte an affidavit that attempted to exculpate Judge Porteous from allegations that he (Judge Porteous) received cash in exchange for his taking official acts in lowering bonds. In addition, Judge Porteous's present counsel, Mr. Westling, is personally and intimately familiar with the Marcotte allegations — having represented Louis Marcotte in connection with his guilty plea in March 2004 and, in fact, having been present representing Louis Marcotte during Louis Marcotte's debriefing interviews with the FBI in 2004.⁵ The allegations in Article II track the substance and detail of those interviews and Louis Marcotte's and Lori Marcotte's Task Force testimony, at which Judge Porteous was in attendance.

Article III. Judge Porteous has been aware of the details and substance of the bankruptcy allegations since at least 2004, when his bankruptcy attorney, Claude Lightfoot, was subpoenaed to the grand jury in connection with the Department of Justice criminal investigation. Judge Porteous was provided complete discovery on this topic at the Fifth Circuit Hearing, including Lightfoot's prior grand jury testimony and his files. He examined Lightfoot and other witnesses at the Fifth Circuit Hearing, and Mr. Westling was provided the opportunity to examine Lightfoot at the Task Force Hearing.

Article IV. As noted above, Judge Porteous is well aware of the allegations and evidence related to his relationships both with attorneys Robert Creely and Jacob Amato and with Louis Marcotte — information that Judge Porteous is alleged to have concealed in connection with his 1994 background check. Furthermore, the evidentiary materials memorializing his statements consist of but a handful of documents, some of which were disclosed at the House Task Force hearings in November of 2009.

⁵ In a letter dated October 29, 2009, Mr. Schiff and Mr. Goodlatte alerted Mr. Westling to the potential conflict of interest in his taking a role in these proceedings on behalf of Judge Porteous that would require him to take a position or actions adverse to the Marcottes. It would be appropriate that Judge Porteous affirmatively waive any objection to Mr. Westling representing him arising from Mr. Westling's potential conflict so that no issue emerges at trial that would cause Mr. Westling to seek to withdraw and thus delay the proceedings.

We look forward to working with the Committee to expedite the proceedings in this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Schiff', written over a horizontal line.

Adam Schiff
House Impeachment Manager

A handwritten signature in black ink, appearing to read 'Bob Goodlatte', written over a horizontal line.

Bob Goodlatte
House Impeachment Manager

cc: Morgan Frankel
Senate Legal Counsel

Attachments

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

2009 SEP 15 AM 11:53

LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

09-6299

RHONDA DANOS

Plaintiff

VERSUS

NO: **SECT. A MAG. 3**
CIVIL ACTION

SECTION: _____

MAG: _____

Suit for Declaratory
Judgment pursuant to

28 U.S.C. § 2201

and

28 U.S.C. § 2202

and

Such Equitable Relief
as the Court deems
proper.

EDITH JONES, Chief Judge, United States Court of Appeals for the Fifth Circuit individually and in her official capacity as presiding officer of the Judicial Council of the Fifth Circuit, THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT, an entity created by Congress pursuant to 28 U.S.C. §332 composed entirely of Article III Judges; AND, CAROLYN DINEEN KING, Judge, United States Court of Appeals for the Fifth Circuit, JERRY E. SMITH, Judge, United States Court of Appeals for the Fifth Circuit, W. EUGENE DAVIS Judge, United States Court of Appeals for the Fifth Circuit, RHEA H. BARKSDALE Judge, United States Court of Appeals for the Fifth Circuit, EDITH BROWN CLEMENT, A.K.A. "JOY" CLEMENT, Judge, United States Court of Appeals for the Fifth Circuit, FRISCILLA R. OWEN Judge, United States Court of Appeals for the Fifth Circuit, JENNIFER WALKER ELROD Judge, United States Court of Appeals for the Fifth Circuit, LESLIE H. SOUTHWICK Judge, United States Court of Appeals for the Fifth Circuit, SARAH S. VANCE, United States District Judge for the Eastern District of Louisiana, NEAL B. BIGGERS JR., United States District Judge for the Northern District of Mississippi, LOUIS G. GUIROLA, JR., United States District Judge for the Southern District of Mississippi, SAM R. CUMMINGS, United States District Judge for the Northern District of Texas, HAYDEN HEAD, United States District Judge for the Southern District of Texas, FRED BIERY, United States District Judge for the Western District of Texas, each of the foregoing named Judges are named as Defendants herein, in their official capacity as a member of the Judicial Council of the Fifth Circuit and individually.

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

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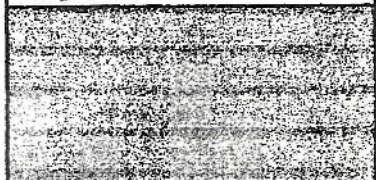
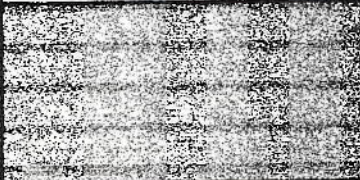
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PURSUANT TO 28 U.S.C. § 2201 AND
FOR FURTHER RELIEF PURSUANT TO 28 U.S.C. § 2202.

(Seeking a Declaratory Judgment under 28 U.S.C. §2201, declaring the nullity of an ULTRA VIRES¹ ACT, described herein, by Government Actors, under color of their Authority as Members of The Judicial Council of the Fifth Circuit and thereby imposing termination of employment, suffering, and punishment, upon Plaintiff, a Statutory Employee under Title 28 U.S.C. § 752 of an Article III Judge, in violation of all known promises of Inherent Fairness, Constitutional Rights under the 1st and the 5th, Amendments, violation of The Separation of Powers Doctrine and a violation of U.S. Const. Article II, Section 4 (the removal clause), and a violation of the the Authority of the Judicial Council of the Fifth Circuit and thereby making such act and order an ultra vires act, unconstitutional on its face and as applied; and, for further relief pursuant to 28 U.S.C. § 2202.)

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.....

¹*Ultra Vires*: An act performed without any authority to act on subject. Ultra Vires act of municipality is one which is beyond powers conferred upon it by law. See Black's Law Dictionary, Sixth Edition.

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28 U.S.C. §354(a)(2)(A)(i): Authority of Judicial Councils to order "on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint".	30 of 39	U.S. Const. Art. II §4: Impeachment removal clause giving Congress the sole power to remove an Article III Judge. 	33 of 39 
			

STATUTES	Pg#	CONSTITUTIONAL PROVISIONS	Pg#
<p>28 U.S.C. §354(a)(2)(A)(ii): Authority of Judicial Councils for "censuring or reprimanding such judge by means of private communication".</p> <p>28 U.S.C. §354(a)(2)(A)(iii): Authority of Judicial Councils for "censuring or reprimanding such judge by means of public announcement".</p>	<p>30 of 39</p> <p>30 of 39</p>	<p>US. Const. Art. III §1: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.</p>	<p>33 of 39</p>
<p>28 U.S.C. §332(d)(1): Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment.</p>	<p>29 of 39</p>	<p>U.S. Const. Amend. 1: To petition Government for a redress of grievances.</p> 	<p>35 of 39</p> 
<p>28 U.S.C. §331: 28 U.S.C. § 331: Congressional creation of the Judicial Conference of the United States for the purpose of implementing the Judicial Conduct and Disability Act of 1980 (28 U.S.C. § 354 et seq.)</p> 	<p>30 of 29</p> 	<p>U.S. Const. Amend. 5: The Due Process and Equal Protection Clause thereof:</p> <p>Fifth Amendment equal protection claims are cognizable under the Amendment's Due Process Clause. <i>Schneider v. Rusk</i>, 377 U.S. 163, 168, 84 S.Ct. 1187, 1190, 12 L.Ed.2d 218 (1964); <i>Bolling v. Sharps</i>, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." <i>Buckley v. Valeo</i>, 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976).</p>	<p>34 of 39</p>

3. The Judicial Council of the Fifth Circuit committed an “*ULTRA VIRES*” act by issuing an “Order that Judge Porteous’ authority to employ staff, i.e. his secretary and law clerk(s) be suspended for the period of time encompassed by paragraph 2 above. *See* 28. U.S.C. §§ 332(d)(1).” The Judicial Council of the Fifth Circuit had no legal authority nor any jurisdiction to issue such an Order; and,

4. The Judicial Council of the Fifth Circuit’s “Order that Judge Porteous’ authority to employ staff, i.e. his secretary and law clerk(s) be suspended for the period of time encompassed by paragraph 2 above is null, void, and without any legal effect whatsoever; and,

5. Further Relief, to-wit:

1. Plaintiff Rhonda Danos be reinstated to her position as secretary to Judge Porteous, forthwith.

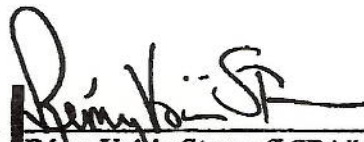
2. Plaintiff Rhonda Danos be immediately remunerated in all amounts, benefits and emoluments including but not limited to all back pay and retirement credits due her from September 19, 2008 until such time as She is reinstated.

3. And for Attorney’s fees and Costs to be assessed against the Defendants, each and all, and for any and all other equitable relief this Honorable Court deems just.

Respectfully Submitted,



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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

(202) 225-3851
<http://www.house.gov/judiciary>

October 29, 2009

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THOMAS ROONEY, Florida
OREGON HARRIS, Minnesota

Richard Westling, Esq.
Ober Kaler Grimes & Shriver
1401 H Street, N.W., Suite 500
Washington, D.C. 20005

Re: Impeachment Inquiry of Judge G. Thomas Porteous, Jr.

Dear Mr. Westling:

It has come to the attention of the Impeachment Task Force that you may currently represent Louis M. Marcotte, III, and Lori M. Marcotte in connection with civil litigation arising out of their operation of Bail Bonds Unlimited, Inc. (Bartholomew v. Bail Bonds Unlimited, Inc. et al, Case No. 2:05-cv-04165-ILRL-JCW (E.D. La.)), and that you previously represented Louis M. Marcotte, III, in his criminal case (U.S. v. Marcotte, Crim. No. 04-061 (E.D. La.)).

As you know, Judge Porteous's relationship with Louis Marcotte and Lori Marcotte may be at issue in the pending Impeachment Inquiry being conducted by the Task Force for the House of Representatives, Committee on the Judiciary, and either or both may be called as witnesses at a hearing adverse to Judge Porteous.

As we are also sure you are aware, because of your duties of loyalty to current and prior clients and duties to protect confidential information, if there were to be a hearing where the relationship between the Marcottes and Judge Porteous is at issue, there would be significant conflict of interest issues arising from your participation. Further, those conflict issues may be implicated by your participation in the formulation of a factual defense of Judge Porteous where you are constrained from providing advice due to your ongoing ethical obligations.

As you know, the ethical bar rules in the District of Columbia, Maryland and Louisiana require informed consent by all clients in order to permit waivers of conflicts, and two of these jurisdictions require that such informed consent be in a signed writing. See, e.g., District of Columbia Rules of Professional Conduct, Rule 1.7(c); Louisiana Rules of Professional Conduct, Rule 1.7(b)(4) (requires writing); Maryland Lawyer's Rules of Professional Conduct, Rule 1.7(b)(4) (requires writing). We request that you promptly provide the Task Force with signed consent forms from all three of these clients. Until the Task Force and Committee are fully apprised, we will not be in a position to make a determination of the appropriate treatment of this situation in the event that the Marcottes are called as witnesses adverse to Judge Porteous.

Mr. Westling
October 29, 2009
Page 2

We write now to put you and Judge Porteous on notice of the House's concern and so that you and he can take appropriate steps promptly to deal with this situation. We are aware that, in the past, Judge Porteous sought delays in Fifth Circuit proceedings in order for him to obtain new counsel. No delays in our schedule will be permitted to accommodate any search for additional or replacement counsel for Judge Porteous. If a hearing is scheduled at which the Marcottes are to testify, the Task Force will not postpone it in order for Judge Porteous to obtain new or different counsel.

We look forward to your providing the Task Force with the information we seek and your response to our concerns at your earliest opportunity so that the Task Force and the Committee can determine how we will proceed in light of this situation.

Please respond to Alan I. Baron, Esq., Seyfarth Shaw, 975 F. Street, N.W., Washington, D.C., 20004 (202-828-3589).

Sincerely,



Adam Schiff
Chairman
Impeachment Task Force



Bob Goodlatte
Ranking Member
Impeachment Task Force

In The Senate of the United States
Sitting as a Court of Impeachment

_____)
In re: _____)
Impeachment of G. Thomas Porteous, Jr., _____)
United States District Judge for the _____)
Eastern District of Louisiana _____)
_____)

PROPOSED ORDER

THE FOREGOING MOTION TO WITHDRAW FROM THE REPRESENTATION OF THE HON. G. THOMAS PORTEOUS, AN ARTICLE III JUDGE, THE PREMISES RECITED THEREIN AND TAKING NOTICE OF THE PROCEEDINGS ENTITLED *RHONDA DANOS V. EDITH JONES, CHIEF JUDGE, ET AL*, NO. 09-6299 ON THE DOCKET OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA WHEREIN THE MOVERS REPRESENTS RHONDA DANOS, AS PLAINTIFF AND LISTED AS A WITNESS ON BEHALF OF THE SENATE TRIAL COMMITTEE IN THE IMPEACHMENT PROCEEDINGS OF G. THOMAS PORTEOUSE, AN ARTICLE III JUDGE, AND THE CONFLICT OF INTEREST THEREBY ARISING, CONSIDERED:

SAMUEL S. DALTON (LSBA# 4473) AND RÉMY VOISIN STARNs (LSBA# 26522) ATTORNEYS ARE HEREWITH DISMISSED AS ATTORNEYS FOR HON. G. THOMAS PORTEOUS, AN ARTICLE III JUDGE. IN THESE IMPEACHMENT PROCEEDINGS.

WASHINGTON, D.C. THIS ____ DAY OF _____, 2010.

CLAIRE McCASKILL, CHAIR
SENATE IMPEACHMENT TRIAL COMMITTEE

ORRIN G. HATCH, VICE CHAIR
SENATE IMPEACHMENT TRIAL COMMITTEE

